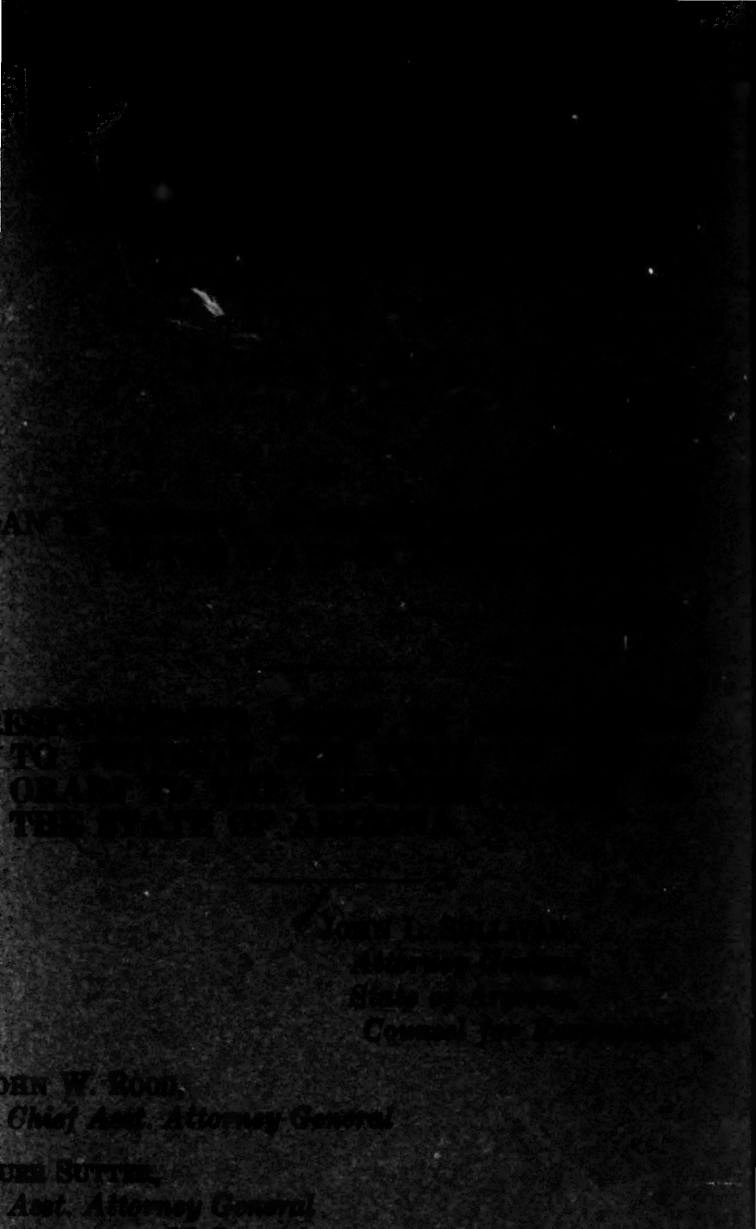

INDEX

SUBJECT INDEX

	Page
SUMMARY OF ARGUMENT	1-4
OPENING STATEMENT	4
ARGUMENT ON PROPOSITION NO. I (Lack of federal question.)	4-5
ARGUMENT ON PROPOSITION NO. II (Guarantee of republican form of government not a judicial question.)	6-10
ARGUMENT ON PROPOSITION NO. III (Due process of law.)	10-12
ARGUMENT ON PROPOSITION NO. IV (The question here presented has become moot.)	12-16
ARGUMENT ON PROPOSITION NO. V (Submission of referred measures to vote.)	16-23
CONCLUSION	24

TABLE OF CASES CITED

American Surety Co. v. Baldwin, 287 U.S. 156, 77 L. ed. 231, 53 Sup. Ct. 98, 86 A.L.R. 298	5
Bowie v. Scott, 233 U.S. 658, 58 L. ed. 1141, 34 Sup. Ct. 769	11
Caine v. Robbins, 61 Nev. 416, 131 Pac. (2d) 516	21
Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co., 228 U.S. 326, 33 Sup. Ct. 510, 57 L. ed. 857	5-11

TABLE OF CASES CITED—(Continued)

	Page
Fisher v. Baker, 203 U.S. 174, 51 L. ed. 142	16
Garvey, Secretary of State, v. Trew, 170 Pac. (2d) 845	6
Gulf, Colorado & Santa Fe Ry. v. Dennis, 224 U.S. 503, 56 L. ed. 860	16
Herndon v. Georgia, 295 U.S. 441, 79 L. ed. 1530, 55 Sup. Ct. 794	5
In re Duncan, Petitioner, 139 U.S. 449, 35 L. ed. 219, 11 Sup. Ct. 573	7
Kerby v. Griffin, 48 Ariz. 434, 62 Pac. 1141	14
Luther v. Borden, 7 Howard (48 U.S.) 1, 12 L. ed. 581	9
McDonald v. Oregon R. R. & Navigation Co., 233 U.S. 665, 58 L. ed. 1147	11-12
Mills v. Green, 159 U.S. 651, 40 L. ed. 293	15-16
Missouri Pacific R. R. Co. v. Hanna, 266 U.S. 184, 69 L. ed. 235, 45 Sup. Ct. 36	5
Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74, 74 L. ed. 710, 50 Sup. Ct. 228, 66 A.L.R. 1460	10
Richardson v. McChesney, 218 U.S. 487, 54 L. ed. 1121	16
Senna v. Tile Layers' Protective Union, Local No. 5, 301 U.S. 468, 57 Sup. Ct. 857, 81 L. ed. 1229	23
Sims Printing Co. v. Frohmiller, 54 Ariz. 64, 92 Pac. (2d) 334	14

TABLE OF CASES CITED—(Continued)

	Page
State v. District Court, 106 Mont. 470, 78 Pac. (2d) 937	20-21
Supreme Lodge, Knights of Pythias, v. Eiser, 265 U.S. 41, 44 Sup. Ct. 436, 68 L. ed. 891	23
Supreme Lodge, Knights of Pythias, v. Meyer, 265 U.S. 30, 44 Sup. Ct. 432, 68 L. ed. 885	23
Taylor v. Beckman, 178 U.S. 548, 44 L. ed. 1187, 20 Sup. Ct. 890, 1009	8-9
Texas v. White, 7 Wallace (74 U.S.) 700, 98 L. ed. 227	9-10
White River Lumber Co. v. Arkansas ex rel. Appelgate, 279 U.S. 692, 73 L. ed. 903, 49 Sup. Ct. 457	5
White v. Welling, 89 Utah 335, 57 Pac. (2d) 703	18-20

STATUTES CITED

Art. II, parag. 4, Constitution of Arizona	11
Art. IV, part 1, Constitution of Arizona	18-22
Art. IV, part 1, Section 1(3), Constitution of Arizona	5-6
Art. IV, part 1, Section 3, Constitution of Arizona	12
Art. IV, part 1 Section 11, Constitution of Arizona	13
Art. IV, Constitution of United States	17
Art. IV, Section 4, Constitution of United States	6-9

STATUTES CITED—(Continued)

	Page
Chapter 11, 1st Special Session, Laws of 1945	5
Enabling Act	17
Section 60-105, Arizona Code Annotated, 1939	16-22
Section 60-107, Arizona Code Annotated, 1939	13

TEXTS CITED

3 Am. Jur. 314	15
28 Am. Jur. 172, 173, sections 36 and 37	21

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 605

WILMOT W. TREW,

Petitioner,

vs.

DAN E. GARVEY, AS SECRETARY OF STATE OF THE STATE OF ARIZONA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

Proposition No. I

I. Lack of federal question.

A. There is no federal question in this proceeding to be determined by this court.

B. A federal question must appear affirmatively from the record before a writ of certiorari may be issued by this court.

C. The federal question, if any, must be raised before final judgment in the state supreme

court, and comes too late in a motion for rehearing in the state court.

Proposition No. II

II. Guarantee of republican form of government not a judicial question.

A. The decision of the Supreme Court of Arizona in Garvey, Secretary of State, v. Trew, 170 Pac. (2d) 845, does not destroy the republican form of government in Arizona. In fact, such decision was issued in pursuance of and furtherance of the republican form of government adopted by the people of the State of Arizona in the constitution of that state.

B. The enforcement of the guarantee of a republican form of government is not a judicial matter, rather it is legislative and political.

Proposition No. III

III. Due process of law.

A. The original pleadings must aver that the due process clause of the federal constitution is infringed when the state constitution contains a due process clause.

B. The due process clause of the federal constitution (14th Amendment) does not control methods of state procedure.

Proposition No. IV

IV. The question here presented has become moot.

A. No actual controversy here exists because:

1. The measure sought to be referred, Chapter 11, House Bill No. 20, 17th Legislature of Arizona, 1st Special Session, has not been published in publicity pamphlets as required by law.

2. Not having been published, the measure cannot be referred in the 1946 general election held on November 5, 1946.

3. The relief here sought is to compel the filing of the referendum petitions in order to place said measure on the ballot for the general election, and the general election has been held prior to this time.

4. The secretary of state is without power to publish publicity pamphlets relating to said measure at any subsequent general election.

B. The court will not consider a question when some intervening event has rendered the question moot.

1. The passage of time within which the pamphlets could have been published has intervened, and the question is moot.

2. The question raised in this case can only affect a certain election, and, since the election date has passed, the question is now moot.

3. The court will take judicial note of the election laws of the several states.

Proposition No. V

V. Submission of referred measures to vote.

A. The secretary of state is without power or authority to certify a measure to the ballot, which measure is not within the class of measures permitted by the state constitution to be referred.

B. The state courts have the right to pass on the referableness of measures prior to their being voted upon.

C. The meaning attributed to a state constitution and statutes by the state courts must be accepted by the United States Supreme Court as though it had been specifically expressed in the statute.

OPENING STATEMENT

The petition filed herein is a classic example of the delaying tactics frequently used by a litigant who is dissatisfied with the decision of a state court of last resort. Petitioner's request for review by this court is an imposition by him upon the Supreme Court of the United States, since his specifications of error and argument are so lacking in merit as to be frivolous and unworthy of consideration by this august tribunal. Respondent relies on the legal propositions set forth in this, his Brief in Opposition to the Petition for Writ of Certiorari.

ARGUMENT ON PROPOSITION No. I

There is no federal question involved in this proceeding. The only matter before the Supreme Court

of Arizona and the only one decided by it related to the construction of Chapter 11, 1st Special Session, Laws of 1945, and Article IV, part 1, Section 1 (3), Constitution of Arizona. In the absence of a federal question, being properly presented in the state court, this court is without jurisdiction to consider it. *Herndon v. Georgia*, 295 U. S. 441, 79 L. ed. 1530, 55 Sup. Ct. 794. This is true even though a writ of certiorari has already been granted, since the writ must be dismissed where no federal question is involved. *Missouri Pacific R..R. Co. v. Hanna*, 266 U. S. 184, 69 L. ed. 235, 45 Sup. Ct. 36; *American Surety Co. v. Baldwin*, 287 U. S. 156, 77 L. ed. 231, 53 Sup. Ct. 98, 86 A.L.R. 298.

A question raised for the first time in the Supreme Court of the United States will not be considered by it, and it must appear from the record that the constitutional question relied on by the petitioner was presented to or passed upon by the state supreme court. *White River Lumber Co. v. Arkansas ex rel. Appelgate*, 279 U. S. 692, 73 L. ed. 903, 49 Sup. Ct. 457. There is nothing in the record before this court which indicates that a federal question was presented to or decided by the Supreme Court of Arizona. The mere fact that petitioner has attempted to raise a federal question in his specifications of error and argument is insufficient to vest this court with jurisdiction of the proceedings.

Furthermore, a federal question first raised on petition for rehearing in the state supreme court is too late. *American Surety Co. v. Baldwin*, supra; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U. S. 326, 33 Sup. Ct. 510, 57 L. ed. 857.

ARGUMENT ON PROPOSITION No. II

Although petitioner failed to raise any federal question in the court below, he has attempted to do so in his petition for a writ of certiorari, wherein he claims a destruction of the republican form of government in Arizona and a deprivation of property without due process of law. These matters will be treated separately by respondent.

Throughout his specifications of error and argument, petitioner has repeatedly alleged that the decision of the Supreme Court of Arizona in *Garvey, Secretary of State, v. Trew*, 170 Pac. (2d) 845, destroys the republican form of government in Arizona, contrary to the guarantee set forth in Article IV, Section 4, Constitution of the United States, as follows:

> "The United States shall guarantee to every state in this union a republican form of government. * * "

Petitioner's contention is without merit, having no basis in law or in fact. An examination of the record reveals that the Supreme Court of Arizona, in rendering such decision, was merely performing its duties as prescribed by law. That court is a constitutional court, the members of which are elected by the voters of the state as provided by law. One of the necessary functions of such a body under our system is the construction of the provisions of the constitution, the same constitution by which the court was created. In interpreting Article IV, part 1, Section 1(3) of the Constitution of Arizona, the supreme court of that

state was exercising a judicial function in a manner required by the fundamental law itself. The situation is similar to that existing in *In re Duncan, Petitioner*, 139 U. S. 449, 35 L. ed. 219, 11 Sup. Ct. 573, wherein it was said:

> "By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves set bounds to their own power, as against the sudden impulses of mere majorities."
>
> * * * * * * * * *
>
> "The State of Texas is in full possession of its faculties as a member of the Union, and its legislative, executive and judicial departments are peacefully operating by the orderly and settled methods prescribed by its fundamental law. Whether certain statutes have or have not binding force, it is for the State to determine, and that determination in itself involves no infraction of the Constitution of the United States, and raises no Federal question giving the courts of the United States jurisdiction."

If the supreme court were in error in arriving at its decision, that error could have been corrected, and may still be corrected, by the ordinary processes of

legislative enactment or amendment to the constitution.

In *Taylor v. Beckman*, 178 U. S. 548, 44 L. ed. 1187, 20 Sup. Ct. 890, 1009, a writ of error was granted by this court to review a decision of the Supreme Court of Kentucky, in which that court had construed certain Kentucky statutes relating to election contests for state executive officers. It was contended by the disgruntled, ejected officeholders that the Kentucky decision destroyed the republican form of government in that state. This court refused to consider such objection and dismissed the writ with the following remarks:

> " * * * The Commonwealth of Kentucky is in full possession of its faculties as a member of the Union, and no exigency has arisen requiring the interference of the General Government to enforce the guarantees of the Constitution, or to repel invasion, or to put down domestic violence. In the eye of the Constitution, the legislative, executive and judicial departments of the State are peacefully operating by the orderly and settled methods prescribed by its fundamental law, notwithstanding there may be difficulties and disturbances arising from the pendency and determination of these contests. This very case shows that this is so, for those who assert that they were aggrieved by the action of the General Assembly, properly accepted the only appropriate remedy, which under the law was within the reach of the parties. That this proved ineffectual as to them, even though their grounds of complaint may have been in fact well founded, was the result of the constitution and laws under which they lived and by which they were bound. Any remedy beside that is to be found in the

> august tribunal of the people, which is continually sitting, and over whose judgments on the conduct of public functionaries the courts exercise no control.
>
> "We must decline to take jurisdiction on the ground of deprivation of rights embraced by the Fourteenth Amendment, without due process of law, or of the violation of the guarantee of a republican form of government by reason of similar deprivation.
>
> "As remarked by Chief Justice Taney in *Luther v. Bordon*: 'The high power has been conferred on this court of passing judgment upon the acts of the state sovereignties, and of the legislative and executive branches of the Federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums.' "

Furthermore, even though the decision of the Arizona court did act to destroy the republican form of government, it has long been settled that the enforcement of the guarantee contained in Article IV, Section 4, Constitution of the United States, is a legislative question for Congress, rather than a judicial matter for the courts, which lack jurisdiction to consider such objection. *Luther v. Borden*, 7 Howard (48 U. S.) 1, 12 L. ed. 581; *Texas v. White*, 7 Wallace

(74 U. S.) 700, 98 L. ed. 227. This doctrine has been reiterated on numerous occasions by this court and is well stated in *Ohio ex rel. Bryant v. Akron Metropolitan Park District*, 281 U. S. 74, 74 L. ed. 710, 50 Sup. Ct. 228, 66 A.L.R. 1460, as follows:

> "As to the guaranty to every state of a republican form of government (§4, art. 4), it is well settled that the questions arising under it are political, not judicial, in character and thus are for the consideration of the Congress, and not the courts. Pacific States Teleph. & Teleg. Co. v. Oregon, 223 U. S. 118, 56 L. ed. 377, 32 Sup. Ct. Rep. 224; O'Neill v. Leamer, 239 U. S. 244, 248, 60 L. ed. 249, 263, 36 Sup. Ct. Rep. 54; Ohio ex rel. Davis v. Hildebrant, 241 U. S. 565, 60 L. ed. 1172, 36 Sup. Ct. Rep. 708; Mountain Timber Co. v. Washington, 243 U. S. 219, 234, 61 L. ed. 685, 694, 37 Sup. Ct. Rep. 260, Ann. Cas. 1917D, 642, 13 N.C.C.A. 927."

ARGUMENT ON PROPOSITION No. III

Respondent has already pointed out that no federal question of any nature was presented to the courts below.

In regard to petitioner's contention that the decision of the Arizona court operates to deprive him of his property without due process of law, he must originally raise that question in the lower court, and in the event the state constitution contains a due process clause, his original pleading in the trial court must contain an averment referring specifically to the Constitution of the United States. The original pleading in this case did not contain such an averment. In the absence of this averment petitioner has no basis for

invoking the jurisdiction of this court, for a bare allegation that due process of law is lacking will be construed as referring to the state provision rather than the federal. *Bowie v. Scott*, 233 U. S. 658, 58 L. ed. 1141, 34 Sup. Ct. 769; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U. S. 326, 33 Sup. Ct. 510, 57 L. ed. 857. Further, in petitioner's original complaint no mention was made of the due process clause of either constitution.

The Arizona Constitution contains the following provision, Article II, paragraph 4:

> "No person shall be deprived of life, liberty or property without due process of law."

In addition to the above arguments, petitioner's complaint seems squarely within the opinion of Chief Justice White in *McDonald v. Oregon R. R. & Navigation Co.*, 233 U. S. 665, 58 L. ed. 1147, wherein the chief justice said:

> " * * * It is elementary and needs no citation of authority to show that the due process clause of the 14th Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character. So far as the contentions addressed themselves to the subject-matter of jurisdiction, it is clear that they do not deny jurisdiction in the sense of the fundamental absence of any and all right to take cognizance of the cause, but are confined to jurisdiction in the sense of the duty to rightfully decide subjects to which judicial

> power extends. In this aspect the error of all the contentions is within the principle announced in Castillo v. McConnico, 168 U. S. 674, 42 L. ed. 622, 18 Sup. Ct. Rep. 229."

Essentially, that is petitioner's complaint. The methods of procedure whereby he seeks to have his referendum measure certified to the ballot are methods of purely state procedure, and because the lower court did not approve his methods or reasoning, he contends he is deprived of his property without due process of law. Such a position is absurd.

ARGUMENT ON PROPOSITION No. IV

It has been well settled that the Supreme Court of the United States will not take jurisdiction over a matter when no actual controversy exists. Without any reference for the moment to the other matters which respondent relies upon as demonstrating that this court will not take jurisdiction of this action, respondent believes that since the judgment of this court can have no legal effect, the entire matter has become moot, and, since this is so, a reversal of the judgment of the Supreme Court of Arizona will serve no purpose.

Article IV, part 1, Section 3 of the Constitution of Arizona, reserves to the people of Arizona the power of referendum of certain classes of legislative enactments. It was initially contended that the measure in question in this suit was not within the class of measures that are subject to the referendum. That contention was upheld by the Supreme Court of Arizona and will be discussed at a later point in this argu-

ment. However, for the present, that question is immaterial. Article IV, part 1, Section 11, Constitution of Arizona, provides that the texts of all measures submitted for referendum shall be published in the same manner as proposed amendments to the Constitution, and that method is to be followed until the legislature especially provides methods for the publication of referendum measures. Section 60-107, A.C.A. 1939, is legislation specially enacted to provide the method of publishing initiative and referendum measures and now supersedes Article IV, part 1, Section 11 of the Arizona Constitution. This Code section, as amended, provides that not later than the tenth day before the primary election, pamphlets containing the referred measure must be distributed to the precincts, and on the primary election day the election officials must offer one copy of said pamphlet to each voter as he presents himself to vote. However, during the war the required publicity pamphlets must be given to each county recorder seventy-five days before the regular election, which, in respect to the year 1946, would make the delivery date of the pamphlets August 22, 1946. The county recorders must then promptly mail one copy of the pamphlet to each registered voter.

This case, now sought to be brought to this court for review on this petition for certiorari, was decided prior to August 22, 1946, by the Arizona Supreme Court, and as a result of the decision in his favor, the secretary of state, Garvey, did not include the measure in question in the publicity pamphlets, and it has never been so included.

The legal effect of an omission of a secretary of state to include a measure in the publicity pamphlets

has been before the Arizona Supreme Court. It was held in the case of *Kerby v. Griffin*, 48 Ariz. 434, 62 Pac. 1141, that if the referred measure is not published in the pamphlet form required by law, it cannot be validly enacted by the people in the next general election. Thus it is seen that the measure petitioner seeks to have referred cannot be enacted at the general election on November 5, 1946, even if placed on the ballot. In this case, since the mandamus proceeding was to compel the Secretary of State, Garvey, to accept the measure for filing, and since that action was concluded in a manner adverse to the petitioner herein, it is obvious that the measure was never filed and therefore could not be placed upon the ballot of the general election of November 5, 1946.

The next question is whether the measure could be publicized at a later general election and then placed on the ballot. This has also been determined by the Arizona Supreme Court, in the case of *Sims Printing Co. v. Frohmiller*, 54 Ariz. 64, 92 Pac. (2d) 334. There it was held that the secretary of state was without power to publish publicity pamphlets pertaining to a referred measure which had been referred for a prior general election. To be specific, the secretary of state could not publish publicity pamphlets in 1938 which described a measure that should have been publicized for the 1936 election. So it follows that the measure sought to be referred in this suit could not be voted on in 1946 because it does not appear on the ballot and because it was not publicized seventy-five days before November 5, 1946. And it cannot be publicized for any subsequent general election.

A judgment of this court reversing the Arizona Supreme Court and ordering Garvey to file the petitions for referendum in this case would have absolutely no legal effect.

The general rule is that if, during the pendency of proceedings to review a judgment, an event occurs which renders it impossible for the reviewing court to grant any actual relief whatever, the court will not determine the questions litigated below but will dismiss the error or appeal. This applies to mandamus proceedings as well as others. 3 Am. Jur. 314.

Since the Supreme Court of the United States by its judgment could not order the secretary of state to publish the necessary publicity pamphlets and certify the measure to the ballot for the 1946 general election, the date of said election having passed by this time, it follows that the court cannot render any effective relief whatsoever.

At the date of filing this brief, the general election of November 5, 1946 has already passed into history. The holding of that election and the passage of the seventy-five day publication period are intervening acts which are due to a power beyond the control of either party. This court, in the case of *Mills v. Green*, 159 U. S. 651, 40 L. ed. 293, held that where the whole object of the suit was to secure a right to vote at an election, and since the voting day had passed, no relief within the scope of the bill could be granted. The court held that if its decree did not grant any effective relief, it would not proceed to formal judgment and would dismiss the appeal. That is precisely the situation here. Petitioner originally sought to compel

Garvey to file referendum petitions to be voted upon at the general election on November 5, 1946. By binding constructions of the applicable Arizona statutes by the Arizona Supreme Court, it has been held that the measure could only be voted upon at the general election held on November 5, 1946. That date having passed, the petitions for referendum cannot now have any effect.

In *Mills v. Green*, supra, this court held it would take judicial notice of the laws of the several states relating to the days of public elections, and thus this court knows judicially that the Arizona election was held on November 5, 1946.

Another case holding that where the course of an election is to be affected by this court's decree and the election has already passed, the question becomes moot, is *Richardson v. McChesney*, 218 U. S. 487, 54 L. ed. 1121.

For further cases holding this court will not render a decision when the question was moot, see *Fisher v. Baker*, 203 U. S. 174, 51 L. ed. 142, and *Gulf, Colorado & Santa Fe Ry. v. Dennis*, 224 U. S. 503, 56 L. ed. 860.

ARGUMENT ON PROPOSITION No. V

Petitioner argues with great force that since his original pleading in the trial court was predicated on Section 60-105, A.C.A. 1939, this case is confined to the sole issue of the legal sufficiency of the referendum petitions as to whether they conform with the requirements of law as to form and signature, and

that the court below was limited to a determination of that sole issue. He then says that for the Arizona Supreme Court to determine any issue as to whether the measure is subject to the referendum provision of the constitution is depriving the people of the State of Arizona of their reserved power to affirm or disapprove legislative enactments, and is thus an abridgment of the republican form of government guaranteed by Article IV of the Constitution of the United States and the Enabling Act.

At an earlier point in this brief we have discussed the question that problems as to the abridgment of the guarantee of the republican form of government are not judicial but legislative. We confine this portion of our argument to these questions: (a) Is the secretary of state obliged to refer to a vote of the people measures which the constitution specifically exempts from the referendum? (b) In advance of the enactment of such matters, do the courts have the power to determine their referableness?

Respondent believes that the secretary of state is wholly without power to refer to a vote of the people a measure which is specifically exempted from the referendum, and that if his position in that respect is attacked by judicial process, the courts of Arizona have a right to examine the propriety of his actions.

Petitioner seems unwilling to understand the distinction between initiative measures, which, although capable of being initiated, may be for some reason unconstitutional, and a measure which is specifically exempt from referendum. It seems to respondent that a clear distinction exists.

Petitioner concedes the power of the Supreme Court of Arizona to overrule previous decisions, and does not seriously question the soundness of the decision in this case as to the constitutional interpretation of Article IV, part 1 of the Constitution of Arizona. Yet that interpretation is the very essence of this proceeding, whether or not the secretary of state had the power or right to file the petitions. The Arizona Supreme Court said he did not. Yet this petition for certiorari seeks to review the jurisdiction of the Arizona court to make such an inquiry. This proposition was first raised by petitioner in his motion for rehearing, filed in the Arizona Supreme Court, which motion is incidentally a contumacious attack upon the Supreme Court of Arizona merely because it overruled a case which petitioner relied upon to sustain his position. The motion for rehearing is not printed in the record before this court but is a classic example of the type of scurrilous language which is occasionally employed by counsel, disgruntled that a court has rejected his view of the law.

Respondent does not propose to discuss the merits of the case in chief. The opinion of the Supreme Court of Arizona will stand as his advocate in that. However, there are several cases which will be cited to demonstrate that the action of the secretary of state was proper, and hence the judicial review of his action could properly sustain him. The Utah case of *White v. Welling*, 89 Utah 335, 57 Pac. (2d) 703, contains an apt discussion of the powers of the secretary of state in his ministerial capacity. We quote from the court's decision:

"We believe the following principles are appli-

cable in regard to the duty of the secretary of state under the first or preliminary state of procedure dealing with the matter of the application for petition copies as provided by title 25, chapter 10, R.S. 1933: (1) The secretary of state cannot pass upon the constitutionality of any proposed law, at least at this stage of the proceedings under the Initiative and Referendum Act. Threadgill v. Cross, 26 Okl. 403, 109 P. 558, 138 Am. St. Rep. 964; In re Initiative Petition No. 2, 26 Okl. 548, 109 P. 823; In re Initiative State Question No. 10, 26 Okl. 554, 110 P. 647; State v. Osborn, 16 Ariz. 247, 143 P. 117; State v. Kozer, 126 Or. 641, 270 P. 513. If the proposed law showed unquestionably and palpably on its face that it was unconstitutional—for instance, an attempt by the proposed law to abolish a constitutional office, board, or department—it is quite likely that this court would refuse to issue the mandamus on the theory that it would not compel the secretary of state to do something which would in the end be unavailing. State v. Roach, 230 Mo. 408, 130 S. W. 689, 139 Am. St. Rep. 639; State ex rel. Cranfill v. Smith, 330 Mo. 252, 48 S. W. (2d) 891, 81 A.L.R. 1066; State ex rel. Davies v. White, 36 Nev. 334, 136 P. 110, 50 L.R.A. (N.S.) 195. (2) The secretary of state cannot, nor can this court in a mandamus proceeding, pass upon a question of merit, worth, wisdom, validity, or policy of any proposed law intended to be initiated. State v. Kozer, supra. (3) The acts required to be done by the secretary of state, at least under this stage of the procedure provided by the law, are ministerial, and he has no discretion, except in so far as to determine whether the document or instrument submitted and purporting to contain the proposed law to be initiated has the semblance of a law, *or is such a*

> *matter as is not properly the subject of the Initiative and Referendum Act.*
>
> * * * * * * * * * *
>
> (Italics ours.)

and,

> " * * * That is to say, the secretary of state would not be required, for instance, to submit to the people (a) something merely calling for their opinion or other belief; or (b) something which, if voted on favorably by the people, would not have any of the characteristics or attributes of a law; or (c) something which is so unintelligible, incomprehensible, incoherent, or meaningless that it will not permit of a determination as to whether or not, if passed, it would be a law; or (d) *some matter which was not contemplated by the Initiative and Referendum Act, such as a proposed amendment to the Constitution.* See Hodges v. Dawdy, 104 Ark. 583, 149 S. W. 656; Brazell v. Zeigler, 26 Okl. 826, 110 P. 1052."
>
> (Italics ours.)

Thus we see that the secretary of state, as a ministerial officer, may determine in that capacity when the law is incapable of being constitutionally referred.

A Montana case of *State v. District Court*, 106 Mont. 470, 78 Pac. (2d) 937, discusses the referableness of appropriation measures and police power measures in Montana. In that case the Secretary of State of Montana was restrained *prior to election* from certifying said measures to the ballot for a referendum vote. The injunction restrained the submission

of the measures, and the Supreme Court of Montana held that it would sustain the injunction as the measure was within the class of laws which are exempt from referendum, saying:

> "But one major question is before us for decision: Is the act within the exceptions contained in the constitutional provision, and thereby exempt from referendum? This question as it confronts us here contemplates and includes two minor questions: (1) Does the act relate to the appropriation of money, and (2) is it a law necessary for the immediate preservation of public peace, health, or safety? An affirmative answer to either of the minor questions commands an affirmative answer to the major question."

At a later point in the decision, the court held the act sought to be referred was not within the exemptions, but the quoted portion is pertinent to the point here urged. It is clear that the Montana court felt it had full power to decide the question of a measure's being properly referred *prior* to a vote of the people.

The same view was announced in the Nevada case of *Caine v. Robbins*, 61 Nev. 416, 131 Pac. (2d) 516. See also, 28 Am. Jur. 172, 173, sections 36 and 37.

In no sense can it be said that the action of the secretary of state or the court was an interference with the legislative department of Arizona. In refusing to accept the petitions the secretary of state was acting in full accord with the constitutional provisions and in aid and assistance of the legislative or law-making department, which provisions provide that bills enacted by the legislature for appropriations of the

character contained in this measure are not subject to the referendum. The action of the secretary and the court merely blocked interference with the constitutional law-making functions both of the legislature and of the people. Obviously, if a measure must be referred where the requisite number of signers are secured, and there is no power in the secretary or the court to stop such reference, the constitutional exception as to laws pertaining to peace, safety, etc. and appropriations would be wholly nugatory. The result would be that every measure passed by the legislature, even though with an emergency clause, would be referable.

The decision in this case relates solely to the meaning attributed to Article IV, part 1, Constitution of Arizona, and Section 60-105, A.C.A. 1939. These are purely state matters and in no manner give rise to any federal question. Petitioner has not pointed out any federal question other than that of an abridgment of the republican form of government and the due process clause in the federal Constitution, which points have already been discussed. The errors relating to these propositions are numbered 4, 5 and 6 of petitioner's reasons for the allowance of the writ of certiorari. Numbers 1, 2, 3, 7, 8, 9, 10, 11, 12 and 13 are all purely state matters and deal with the meaning and construction given various phases of the Constitution of Arizona and the Arizona statutes. This is readily apparent from reading the alleged assignments of error.

Since these questions are purely local and state questions, it is the well settled law of this court that the meaning attributed to the state constitution and sta-

tutes by the state court must be accepted as though it had been specifically expressed in the statute. As was so ably said by Mr. Justice Sutherland in *Supreme Lodge, Knights of Pythias, v. Meyer*, 265 U. S. 30, 44 Sup. Ct. 432, 68 L. ed. 885:

> "Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the state, fixing the meaning of the state legislation, as though such meaning had been specifically expressed therein. See, for example, Leffingwell v. Warren, 2 Black, 599, 603, 17 L. ed. 261, 262; Green v. Neal, 6 Pet. 291, 297-300, 8 L. ed. 402, 404-406. And we follow the state construction even though it may not agree with our own opinion. Carroll County v. United States, 18 Wall. 71, 82, 21 L. ed. 771, 775; Shelby v. Guy, 11 Wheat. 361, 367, 6 L. ed. 495, 496; Tioga R. Co. v. Blossburg & C. R. Co., 20 Wall. 137, 143, 22 L. ed. 331, 334. * * * "

See also, *Supreme Lodge, Knights of Pythias, v. Eiser*, 265 U. S. 41, 44 S. Ct. 436, 68 L. ed. 891, and *Senna v. Tile Layers' Protective Union Local No. 5* 301 U. S. 468 Sup. Ct. 857, 81 L. ed. 1229.

We do not concede that any of the questions raised in petitioner's assignment of error are federal questions and believe that the above cited law applies to all thirteen assignments.

CONCLUSION

Based on the foregoing reasons, respondent submits that this court should properly deny petitioner's application for writ of certiorari.

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